

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT T. PHIFER,

Defendant-Appellant.

UNPUBLISHED

December 19, 1997

No. 195264

Genesee Circuit Court

LC No. 95-053280 FC

AFTER REMAND

Before: Griffin, P.J., and Markman and Whitbeck, JJ.

MEMORANDUM.

Defendant appeals by right a conviction by plea of nolo contendere to first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2). Previously, we remanded, while retaining jurisdiction, for a ruling on whether defendant's plea was voluntarily and understandingly entered. We now affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

Defendant first argues that his plea must be set aside on the basis that the trial court clearly erred in ruling that his plea was not knowingly and voluntarily entered. MCR 6.302. The record reveals no evidence from which this Court can conclude that defendant's plea was anything but knowingly and voluntarily entered. *People v Thew*, 201 Mich App 78, 82-84; 506 NW2d 547 (1993). Defendant presented no evidence on remand that a different conclusion is warranted.

Defendant next argues that his trial counsel rendered ineffective assistance at sentencing when he informed the court that no motion was pending before the court without first consulting with defendant to determine whether defendant wished to move to withdraw his plea. According to defendant, counsel's action precluded defendant from moving to withdraw his plea. Defendant's claim is not supported by the record in light of the trial court's repeated attempts to ascertain from defendant why he wished to proceed to trial. *Thew, supra* at 89-90.

Defendant also argues that he is entitled to either the vacation of his plea or a second remand because the trial court refused to follow this Court's instructions on remand. We disagree. Our review of the record reveals that the trial court considered all pertinent portions of the lower court record and all information supplied by defendant. The trial court complied with our instructions on remand.

Affirmed.

/s/ Richard Allen Griffin

/s/ Stephen J. Markman

/s/ William C. Whitbeck